

UNITED STATES BANKRUPTCY COURT
NORTHERN DISTRICT OF CALIFORNIA

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In Re:) Case No. 19-30088
) Chapter 11
PG&E CORPORATION AND PACIFIC)
GAS AND ELECTRIC COMPANY,) San Francisco, California
) Wednesday, July 31, 2019
Debtors.) 9:30 AM
)
MOTION FOR RELIEF FROM STAY
FILED BY PHILIP VERWEY
[1141]; MOTION FOR RELIEF FROM
STAY FILED BY MARTA MESTER
[3036]; MOTION FOR RELIEF
FROM STAY FILED BY DAN CLARKE
[2823]

TRANSCRIPT OF PROCEEDINGS
BEFORE THE HONORABLE DENNIS MONTALI
UNITED STATES BANKRUPTCY JUDGE

APPEARANCES:

For the Debtor: PETER J. BENVENUTTI, ESQ.
Keller & Benvenutti LLP
650 California Street
Suite 1900
San Francisco, CA 94108
(415)364-6798

For Philip Verwey Farms: ANNIE DUONG, ESQ.
McCormick Barstow LLP
7647 North Fresno Street
Fresno, CA 93720
(559)433-1300

For Official Creditors'
Committee: GREGORY A. BRAY, ESQ.
(Telephonically)
DANIEL B. DENNY, ESQ.
(Telephonically)
Milbank LLP
2029 Century Park East
33rd Floor
Los Angeles, CA 90067
(424)386-4000

1 For Official Creditors' ALAN J. STONE, ESQ.
Committee: (Telephonically)
2 Milbank LLP
3 55 Hudson Yards
New York, NY 10001
(212)530-5000
4 For Stroock & Stroock & EREZ E. GILAD, ESQ.
Lavan LLP: (Telephonically)
5 Stroock & Stroock & Lavan LLP
180 Maiden Lane
6 New York, NY 10038
(212)806-6006
7
8 For Stroock & Stroock & FRANK A. MEROLA, ESQ.
Lavan LLP: (Telephonically)
9 Stroock & Stroock & Lavan LLP
2029 Century Park East
10 Los Angeles, CA 90067
(310)556-5800
11 For CPUC: BRIAN S. HERMANN, ESQ.
(Telephonically)
12 ALAN W. KORNBERG, ESQ.
(Telephonically)
13 Paul, Weiss, Rifkind, Wharton &
Garrison LLP
14 1285 Avenue of the Americas
New York, NY 10019
15 (212)373-3545
16 For BlueMountain: MICHAEL H. STRUB, JR., ESQ.
(Telephonically)
17 Irell & Manella LLP
1800 Avenue of the Stars
18 Suite 900
Los Angeles, CA 90067
19 (310)277-1010
20 For BlueMountain: JOHN H. VERAJA, ESQ.
(Telephonically)
21 Cleary Gottlieb Steen & Hamilton
LLP
22 One Liberty Plaza
New York, NY 10006
23 (212)225-2000
24
25

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Court Recorder: JOHN BOLTS
United States Bankruptcy
Court
450 Golden Gate Avenue
16th Floor
San Francisco, CA 94102

Transcriber: JENNIFER NAUS
eScribers, LLC
7227 N. 16th Street
Suite #207
Phoenix, AZ 85020
(973) 406-2250

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SAN FRANCISCO, CALIFORNIA, WEDNESDAY, JULY 31, 2019, 9:33 AM

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(Call to order of the Court.)

THE CLERK: All rise. Court is now in session. The Honorable Dennis Montali presiding.

THE COURT: Good morning.

MR. BENVENUTTI: Good morning, Your Honor.

THE COURT: Please be seated. Mr. Benvenutti, where's the crowd? You usually have a cast of thousands here.

MR. BENVENUTTI: Well, I was just remarking on that to Ms. Parada, but more significantly, we don't seem to have my opponent who hopefully is on her way.

THE COURT: Well, is she on the phone?

THE CLERK: No.

THE COURT: Okay. Well, have we heard anything from?

THE CLERK: I have a voice mail -- email from her, but I can't listen to it, so.

THE COURT: Do you want to go and listen to it?

THE CLERK: I'm trying to set up a telephonic --

THE COURT: Pardon?

THE CLERK: She probably missed the court call.

THE COURT: Well, I mean if you --

THE CLERK: Yeah, I can go in and look.

THE COURT: -- you want to just go and look? Okay.

Well, should we go off the record, I guess?

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1 THE CLERK: Yes.

2 THE COURT: Yeah, okay.

3 MR. BENVENUTTI: Yes, please.

4 THE COURT: Mr. Bolts, take us off the record for a
5 moment?

6 (Recess from 9:34 a.m., until 9:36 a.m.)

7 THE CLERK: The matter of PG&E Corporation.

8 THE COURT: All right. Appearances, please. Counsel,
9 Ms. --

10 MS. DUONG: This is Annie Duong, appearing for Philip
11 Verwey Farm.

12 THE COURT: Okay, Ms. Duong. Good morning.

13 MR. BENVENUTTI: Good morning, Your Honor. Peter
14 Benvenutti on behalf of the debtors.

15 THE COURT: So let me say that I am amazed at the
16 enormous amount of paperwork on this for what is an extremely
17 narrow question. So Ms. Duong, you filed a paper that wasn't
18 really anticipated. But what you didn't say in what you filed
19 yesterday is your client's response to Mr. Benvenutti's
20 suggestion that perhaps all we need here is an agreement that
21 as to the claims that are asserted by PG&E against its
22 customer, which would be one of your clients, we can just
23 maintain the status quo.

24 He said it perhaps a little differently, but that's
25 really what you mean, right, Mr. Benvenutti?

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1 MR. BENVENUTTI: Yes. Yes, it is, Your Honor.

2 THE COURT: So Ms. Duong, as I read the papers,
3 although you kind of throw in there in one of these late briefs
4 your client does business in many forms, that's very
5 interesting, but it's not very relevant. So the way I see it,
6 there is about a hundred and -- I've got the specific numbers,
7 130,000 dollars that is billed to one entity, Hanford, just a
8 few hundred dollars that's billed to Madeira, and the
9 difference presumably is billed to the debtor -- I mean, I'm
10 sorry, your client, not the debtor, Mr. Verwey.

11 And you haven't had -- in the six months of the
12 bankruptcy, he hasn't received a threat or a demand or a
13 cancellation threat about anything for paying that claim, has
14 he?

15 MS. DUONG: He has, Your Honor.

16 THE COURT: He has?

17 MS. DUONG: Yes, he has. He has gotten notices from
18 PG&E's risk department --

19 THE COURT: Okay.

20 MS. DUONG: -- as well as their claims department.

21 THE COURT: But have you considered just exploring
22 with opposing counsel just an agreement that maintains the
23 status quo as to that amount while all this other stuff gets
24 worked out?

25 MS. DUONG: Absolutely. We actually entered into an

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1 interim agreement --

2 THE COURT: Um-hum.

3 MS. DUONG: -- in which we were to basically suspend
4 and keep the status quo for a certain period of time in order
5 to actually explore the different issues such as liability and
6 the disputes as to the amount.

7 THE COURT: Well, but let's try it a different way.
8 So leave aside the threat, and I certainly understand; whether
9 your client runs a dairy or just lives in his house, it doesn't
10 really matter, if the utility says we're going to turn off your
11 service if you don't pay, that's a threat. I don't make light
12 of it. But six months later it hasn't happened.

13 So what I am going to tell you is forget the threat of
14 turning off the switch. What would you do, and your response
15 be if PG&E filed a lawsuit against your client to recover the
16 amount that has been billed to one or more of your clients;
17 what would your response be? I don't mean the legal words, I
18 mean what would -- as a layperson, what would your response be?

19 MS. DUONG: I mean our response would be that we would
20 have to defend it.

21 THE COURT: No, no. But wouldn't it be yeah, we owe
22 the debt, but we have claims that offset.

23 MS. DUONG: Right.

24 THE COURT: I mean that's what a nonlawyer would even
25 say. Why do I have to pay 390,000 or 260,000 or some other

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1 thousand if they -- they owe me a million dollars?

2 MS. DUONG: Absolutely, that's exactly the basis.

3 THE COURT: So that's -- why can't we just focus on
4 that and say that at least the 264,000 -- I mean, I have to say
5 that the 126,000 billed to Hanford doesn't lend itself to a
6 traditional set-off even if your client does business in
7 multiple different entities. That's perfectly fine. Nothing
8 wrong with that, but the only -- PG&E has the right -- assume
9 for a moment that it has the right to file suit or to take
10 action against its customer who hasn't paid. Hanford is a
11 customer who hasn't paid, so there's nothing that bankruptcy
12 law does about that. So to the extent that -- because it's a
13 defense, that's all. It's just a defense. It's not an
14 exercise of set-off. I mean, it is, but there's nothing to do,
15 right; don't you agree?

16 MS. DUONG: I wouldn't argue as to the interconnection
17 invoices.

18 THE COURT: Okay.

19 MS. DUONG: I think the focus of more of the usage
20 charges, and I think that's what they're even more concerned
21 about, Mr. Verwey.

22 THE COURT: Okay, understood. So what neither of you
23 addressed and is, I don't think, is that although there is a
24 lot of back and forth about the law, including one of you had
25 the good sense to cite one of my own cases -- thank you, not

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1 that it makes any difference -- the law treats an offset right
2 as a secured claim, the equivalent of a secured claim. So your
3 client claims -- again I'll focus on Verwey Farm, PVF -- claims
4 to have been damaged by PG&E for a variety of reasons that are
5 in the record. And someday, and by settlement or litigation or
6 something, there will be a resolution of that.

7 But in the meantime, you client says because I have a
8 claim that you have caused me harm, I don't have to pay you
9 what you owe me. But that's like saying I have a secured claim
10 because a right of set-off is the equivalent of a secured
11 claim.

12 So what happens if a debtor wants to use collateral
13 subject to a secured claim; do you know the answer?

14 MS. DUONG: No.

15 THE COURT: The debtor has to provide adequate
16 protection to make sure that the security isn't impaired. So
17 Mr. Benvenutti, for the client, says we can come up with an
18 adequate protection agreement, which is another way of saying
19 we'll maintain the status quo for the offset.

20 So it's not whether you exercise offset or not; you
21 just protect the 264,000 dollars until you either reach an
22 agreement or there is a judicial determination or arbitration;
23 however you get to it, there is a final accounting of how much
24 the parties owe each other. End of story.

25 And if your client proves that it suffered damages in

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1 excess of the 264, end of story. PG&E pays you the difference
2 or pays you something when it emerges from bankruptcy with a
3 plan.

4 If you lose, your client has to pay PG&E the
5 undisputed usage charge. Nothing fancy about that, right?

6 MS. DUONG: Right. But I think --

7 THE COURT: Any problem with that?

8 MS. DUONG: I do find some issue with that, merely
9 because -- and it kind of comes to the agreement that we kind
10 of reached outside of this, so I don't want to bring too many
11 details in --

12 THE COURT: No.

13 MS. DUONG: -- but essentially is that there was an
14 agreement, and we did have an agreement that no attempts would
15 be while during -- pending --

16 THE COURT: But I don't want you to go there. What I
17 am saying is if we had the simple case. Forget that whole
18 history. You get a bill from PG&E at your home, and PG&E says
19 your overdue 50 dollars, and you call back the service desk and
20 you say but you guys owe me 150 dollars because of that payment
21 I had to make to you for something. And somebody says, hey,
22 that's right. We net it out and you get a refund for 100
23 dollars. Done. So we just add some zeros here and add some
24 other entities and put it in a bankruptcy; it's the same
25 concept.

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1 MS. DUONG: But I don't think that that would
2 necessarily be adequate protection either, even just --

3 THE COURT: Why wouldn't it if you don't have to pay
4 it?

5 MS. DUONG: Right. But that's assuming that
6 everything kind of runs along and trickles down the line.

7 THE COURT: Why?

8 MS. DUONG: There were instances --

9 THE COURT: No, no. Tell me why that is so, because
10 I -- look, you're -- and I'm going to let you answer the
11 question. This started way back months ago. You filed a
12 motion for relief from stay. To do what? To exercise your
13 set-off rights, which is, if we use bankruptcy labels, it's
14 treat my claim against PG&E as a secured claim. That's the
15 functional equivalent.

16 Where it gets more complicated is months go by and
17 more briefing, and then in a reply or opposition you say, oh,
18 by the way, can we have an injunction? I mean that's
19 procedurally inappropriate.

20 So what's so complicated about my telling Mr.
21 Benvenuti that -- or asking him to see if he agrees, that why
22 don't we just hold in place what your client would be allowed
23 to set off, or alternatively, grant relief to exercise set-off,
24 but nothing else happens. You don't -- there's no final
25 accounting. Nobody -- it just maintains the status quo.

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1 Now, tell me what is wrong with that?

2 MS. DUONG: I don't think there is necessarily
3 anything wrong with that.

4 THE COURT: Okay.

5 MS. DUONG: But I just don't believe that that is
6 adequate protection. There is nothing that really stops --

7 For example, say the situation that we agree that from
8 here on out, that no actions will be taken, no shedding off,
9 whatever, right?

10 THE COURT: Right. Yeah.

11 MS. DUONG: But what if during that period, that
12 message doesn't get trickled through and then the power does
13 get shut off?

14 THE COURT: What if there is no bankruptcy, and you've
15 never heard of me, and you've never heard of set-off, and
16 you've never heard of any of these legal doctrines. And your
17 client calls you one day and says they just turned off my
18 power; what do I do? Well, what do you do?

19 I presume there are a hundred things you do, starting
20 by swearing, and you call the CPUC, or you call PG&E, or you
21 say hey, you guys turned off my power; what's the deal, right?
22 Isn't that what you would do if you were in your home and all
23 of a sudden, the power went off? I mean, leave aside third-
24 party things, and you'd say why are you turning my power off?
25 My bill is current. I've paid my bill, right?

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1 MS. DUONG: Yeah, but I think the difference is that
2 because of this bankruptcy stay, we would be prevented from
3 taking any of those actions.

4 THE COURT: Well, think about what you -- again, what
5 you have asked me to do. If I had -- and I do appreciate that
6 it's a big problem for your client, and I don't make light of
7 it. But it's only one of countless problems that have gone on
8 with PG&E.

9 But what you've said in some detail in your papers is
10 you just want to do a final reconciliation of account. You
11 want to prove how PG&E damaged your client and, to the extent
12 you are able to prove that your client was damaged, it should
13 be allowed to pay, to reimburse itself for some of that damage
14 by the money that PG&E is claiming against your client for
15 really unrelated matters. It's the doctrine of set-off that
16 exists in the common law and California law.

17 So what that means to a layperson is your client
18 doesn't have to pay PG&E while it is trying to vindicate its
19 rights that would, if correct, would satisfy, otherwise, the
20 obligation to pay.

21 So again I'll repeat my question. If at the end of
22 the day, whether by arbitration, claims resolution, whatever,
23 if it ends up that PG&E damaged your client by -- I want to
24 stay clear of whether it's 900,000 or 300,000 or some --
25 damaged your client by some amount, then that will be the

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1 determination that your client is owed that amount, and PG&E is
2 owed its amount which for these purposes looks like it's no
3 more than 264,000 dollars, and those just set off one another.

4 So if you win a judgment for 265,000, they owe you
5 1,000 bucks, and your client doesn't pay the 264. If you get a
6 judgment for 50,000 dollars, PG&E is going to look to you for
7 264 minus that amount. That's all this does. And that -- so
8 what else could you hope for?

9 No, of course, I am not condoning PG&E turning the
10 power off for this reason. And if they turn the power off for
11 some other reason, there are consequences. And nobody's
12 endorsing that entitlement.

13 Mr. Benvenuti, have I said anything that is
14 inconsistent with your understanding of the way set-off works
15 and the way these things operate?

16 MR. BENVENUTTI: No, Your Honor. And I might add that
17 given that the Court implicitly accepts that PVF has
18 established a prima facie case for set-off with respect to the
19 court claim asserted in PVF's name against --

20 THE COURT: The 264.

21 MR. BENVENUTTI: -- the 264.

22 THE COURT: Yeah.

23 MR. BENVENUTTI: Right. I'm confident that we can
24 work out a simple agreement that maintains the status quo and
25 that protects Ms. Duong's client against the risk of collection

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1 efforts by my client. There was one instance that happened
2 that I am aware of, and it was as a result of miscommunication.

3 THE COURT: Well, that happens.

4 MR. BENVENUTTI: And I can't guarantee that that won't
5 happen again, but what I can, I think, guarantee with such an
6 agreement is that we would have in place a clear, simple
7 vehicle for dealing with it if it should happen, and making
8 sure that the intent of that agreement that I am suggesting is
9 enforced.

10 THE COURT: Ms. Duong, how can you complain about
11 that? I mean, that -- I mean, really, I understand your client
12 might feel completely spooked by this whole thing, but that's a
13 very traditional, sensible resolution. And sure, PG&E is a
14 complicated case, and your client's situation is a little
15 unusual and unique. But when you cut through all of that, it's
16 a very simple application of the principles of set-off as
17 imposed as the bankruptcy law operates it. And as I say, I --
18 to me, I can't think of a simpler solution for the short term.

19 So once again, I'll say it to you. If there's a
20 stipulated order, and Mr. Benvenutti's client proceeds to
21 violate that order, we have a thing called contempt.

22 But if your client violates the order, we have a thing
23 called contempt too. So I'd rather not worry about that. I'd
24 rather say two lawyers representing their clients agree on
25 behalf of -- or with the consent of their clients -- to what is

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1 a very simple and fairly very traditional kind of status quo.
2 And we can't protect against an accident -- accident of turning
3 off the light, the power, whatever. But there are remedies if
4 that happens.

5 And again, I'm not really suggesting contempt. What
6 I'm saying is that if you have a stipulation that maintains the
7 status quo, and then either resolves consensually or otherwise
8 through the claims process, the total amount of claims that
9 your client asserts minus what are proper set-offs -- again, if
10 Hanford suffered the damage and not PVF, then Hanford may be
11 able to have a set-off for its -- the bill to it. If Hanford
12 didn't suffer damage, then Hanford better pay.

13 Now, Mr. Benvenutti is only addressing, and I'm only
14 addressing, the amount that are legitimately disputed, because
15 you concede that Hanford has a separate bill. I'm not going to
16 worry about the 500-dollar one. You haven't given everything
17 away. It's just a fact. It's a fact. Hanford has been billed
18 for 126,000 dollars and hasn't paid it. And why hasn't it paid
19 it? Well, maybe as a practical matter, the answer is because
20 there's a way to come up with a global solution. But in terms
21 of bankruptcy law, this makes sense to me.

22 MS. DUONG: Okay.

23 MR. BENVENUTTI: Now, you didn't -- Mr. Benvenutti,
24 can your client go the next step and put the Hanford claim in
25 the same bundle of rights to maintain the status quo?

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1 MR. BENVENUTTI: Not on this showing, Your Honor. No.

2 At this point, unless we have some reason to understand that
3 Hanford, in fact, can assert a legitimate basis of set-off --

4 THE COURT: And that it assert damage, right.

5 MR. BENVENUTTI: Yes. We can't do that.

6 THE COURT: Okay. But I mean, if there's some
7 documentation to support a prima facie case, then you have to
8 take another look at that.

9 MR. BENVENUTTI: Absolutely.

10 THE COURT: Again, I think we're back to what would
11 happen if there were no bankruptcy, and PG&E calls up Hanford
12 and says, you owe me 126,000 dollars, and Hanford says, no, you
13 owe me X dollars for the damage had.

14 MR. BENVENUTTI: Correct. And if Hanford, in fact,
15 has a basis for claiming that it's owed X dollars, we have to
16 take account of that.

17 THE COURT: Right.

18 MR. BENVENUTTI: On this record, I don't think it
19 does.

20 MS. DUONG: Yeah. I think the dispute really does
21 come down to, I think, the mechanism for having the adequate
22 protection for Mr. Verwey's properties, but also obviously
23 within this process as well.

24 I think -- and you said it yourself, like, the -- it's
25 not just a fear, but it's a real threat of the damages that

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1 could happen if the power were shut off, which is what the
2 basis of the original motion and the original general claims
3 was for.

4 THE COURT: No. I understand that. But to some
5 extent, your client, at the end of the day -- not the end of
6 the day -- today, your client undoubtedly says, we got damaged
7 by a lot of money, and we want to made whole for our damage.
8 There's nothing wrong with saying that, and if he or it can
9 prove its case, it should be made whole. I don't disagree.
10 But if it can't, then that's life in the big city. That's what
11 happens.

12 MS. DUONG: Right. Right. And I think I was actually
13 more making a comment and a statement as to the agreement that
14 there would -- or a stipulation for order -- that no action
15 would be taken on these properties in between here and whenever
16 the litigation would presumably occur.

17 THE COURT: But see, that gets back -- and I don't
18 want to turn this into a lecture from the judge to a lawyer,
19 perhaps, appearing here in my court for the first time -- I
20 think; maybe you have before, but I don't remember -- but
21 that's why you don't put in a reply brief at the last page, by
22 the way, can I have an injunction. I mean, if you really think
23 PG&E is going to go off and do some bad things to you, get an
24 injunction. But don't throw it into a reply brief at the end.

25 I mean, sure, again, I'm not going to minimize what

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1 your client must think, and it's ugly, tragic; about twenty
2 years ago, I had a case involving -- I was on the BAP, and I
3 had a case involving a dairy that there was an electrical
4 problem, and some of the cows were electrocuted. And it wasn't
5 funny, but that's what happened.

6 So your client -- some of your livestock, I think,
7 were damaged or injured or killed, right?

8 MS. DUONG: Correct.

9 THE COURT: Yeah. So it's the same history repeating
10 itself. So it's not funny, but if there were no bankruptcy,
11 and PG&E said, Mr. Verwey, you owe us a lot of money, and we're
12 going to turn off your power, and it's too bad if your cows
13 die, you might be down to Superior Court seeking an injunction
14 saying they can't turn off the power because we will suffer
15 harm, blah, blah, blah -- the usual injunction provisions.

16 So the point is you could have; you didn't. That's
17 not the issue. And the narrow issue is, can your client
18 exercise set-off, which is a legal way of saying, can your
19 client not pay what he doesn't think he has to pay because he,
20 in turn, has suffered corresponding or off-setting damages.
21 And as Mr. Benvenutti just stated, PVF at least makes a prima
22 facie case for damages that it has suffered, which is a prima
23 facie -- and by saying prima facie, I don't mean a ruling. It
24 just sounds like a credible argument. 264 owed PG&E, X
25 dollars -- possibly, likely more than 264 owed by PG&E.

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1 Nothing could be more obvious than a set-off.

2 So my question to you, or my invitation to you is do
3 that, because that's what I think you're entitled to, and as
4 Mr. Benvenutti said on this record, he cannot concede that
5 there's another 126,000 because if you treat it that way, I'd
6 like to think he's not going to go back to the office and call
7 the client and say, turn off Hanford's power this afternoon. I
8 would say that that would be surprising and that this is the
9 kind of thing that could be resolved all the way -- maybe not
10 all the way to complete resolution. But if you can make a case
11 for a prima facie set-off of that 126, I'd be surprised if PG&E
12 would argue about your entitlement to turn the 264 set-off into
13 the total of the 390. Again, I'm not going to worry about the
14 500 dollars.

15 MR. BENVENUTTI: Your Honor, may I make this
16 suggestion?

17 THE COURT: Yes, sir.

18 MR. BENVENUTTI: I completely agree that this should
19 be done by agreement if at all possible, not by order. I will
20 assure both the Court and Ms. Duong that PG&E's lawyers have
21 every expectation that PG&E would abide by such an agreement,
22 allowing for the risk of miscommunication, which is why build
23 into the agreement, some mechanism for flagging that issue if
24 it should happen, and dealing with it expeditiously.

25 I would suggest that Ms. Duong and I attempt to work

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1 out such a simple agreement, which I think can be done based on
2 the Court's guidance, and I would be happy to have a continued
3 hearing holding date as assurances to Ms. Duong that will make
4 that happen, and if need be, we'll be back in front of the
5 Court to sort it out at that point.

6 THE COURT: I'd like to avoid that. But can you live
7 with that?

8 MS. DUONG: I think that -- obviously, I haven't
9 consulted my client on --

10 THE COURT: Right.

11 MS. DUONG: -- these suggestions. But I think my -- I
12 think I have an inkling that my client would be more protected
13 and feel more comfortable with a stipulated order. I think
14 that is much more protection for miscommunications for
15 additional demands and threats, and I think that's especially
16 the spooked -- I think that's what you -- the term you used
17 earlier. He's especially spooked because power was shut off,
18 because threats were made, because voice messages were left,
19 and emails, and to his staff, to himself. And because of that,
20 I think the stipulated -- if there was -- if we agree to
21 anything, it would be a stipulation by order.

22 THE COURT: Okay. I'm going to -- I'm going to permit
23 that and give you a continued date. I think I'm a little
24 troubled by the amount of money that, perhaps, has been spent
25 on what still is a fairly narrow issue, but I don't minimize

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1 your client -- particularly the client's anxiety and concerns
2 about this. And the fact is, you probably would be telling me
3 if your client called you this morning to say they just turned
4 the power off.

5 So I'm going to give you a continued date and ask you
6 to -- Mr. Benvenutti to work out some accommodation -- some
7 resolution that might maintain the status quo.

8 And beyond the status quo, if possible. I mean, great
9 if this thing could be resolved completely. As I say, we can't
10 solve the problem, and maybe it's beyond the ability to handle
11 it in this fashion to say what's the total off-setting claim,
12 but maybe there's a way to negotiate that too. That's for
13 another day.

14 MR. BENVENUTTI: Your Honor, if I may --

15 THE COURT: Yeah.

16 MR. BENVENUTTI: -- there have been attempts to
17 reach --

18 THE COURT: Right.

19 MR. BENVENUTTI: -- a global settlement. Those
20 attempts have been unsuccessful. Hope always springs eternal.
21 I don't want to convey a false sense of --

22 THE COURT: No.

23 MR. BENVENUTTI: -- optimism. At this point, I think
24 it is likely that there will need to be litigation through the
25 claims objection process to resolve --

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1 THE COURT: Well, that was my next --

2 MR. BENVENUTTI: -- PVF's claim.

3 THE COURT: -- question I had. I didn't -- and maybe
4 it's in the papers -- have your client -- has the client -- and
5 they filed claims under the -- in the case? Yeah, I mean, the
6 claim's bar date is still running. Have they filed a claim
7 yet?

8 MS. DUONG: Are you asking if they filed proofs of
9 claims?

10 THE COURT: Yes.

11 MS. DUONG: Yes, they have.

12 THE COURT: Okay.

13 MR. BENVENUTTI: Yeah. So the agreement that I have
14 in mind would remain in place until there's a resolution of the
15 PVF claim.

16 THE COURT: Right. Right. Yeah, I don't know as I
17 sit here how unconsensual (sic) claims resolution is going to
18 happen. That's a bigger question that affects more than your
19 client and the dairy problem. Obviously, it affects tens of
20 thousands of claims in the fire end of the case. It's on the
21 to-do list of all the principal lawyers and the judge.

22 MS. DUONG: And I don't doubt that, Your Honor.

23 THE COURT: And so to the extent that the lawyers and
24 the judge can take care of, either for the short-term or
25 permanently, something that is unrelated to the fire claims,

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1 then that's progress.

2 So all right. I'm going to take -- look, Mr.
3 Benvenutti knows the bankruptcy law -- I'm not suggesting you
4 don't. What I'm saying is, he knows it and how I operate in
5 this case and other cases and bankruptcy judges generally. And
6 he knows, and I'm sure you know, the fundamental principles of
7 set-off. And that's why I'm not even getting into this debate
8 about post- and pre-petition and everything else.

9 I take this case, as many of the cases that I deal
10 with in the PG&E case -- how would we handle this if there were
11 no bankruptcy? And the answer is, I think, if I were a
12 Superior Court judge, and I was having a discussion with you
13 too, Counsel, about this kind of dispute, I think the
14 resolution would be the same. And there's nothing magic about
15 bankruptcy. It's just a little more difficult because of the
16 different terminology, and the applicable statutes, and so on.

17 But at the end of the day, it is a recognition of
18 claims that are going both ways: one of which is undisputed,
19 the other which is disputed -- or the collection.

20 Why don't I do this. There have been two or three
21 prior hearings. We don't need to have you come to court and
22 spend money. And Ms. Duong, you're certainly welcome to appear
23 by phone if you have -- I mean, Mr. Benvenutti didn't have to
24 come very far, but you had to come from Fresno. So you really
25 ought to take to take advantage of our phones just for your own

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1 sake, but you're welcome here.

2 And I'm going to give you a later date for a holding
3 with the expectation that at least the short-term matter will
4 be resolved. You can take Mr. Benvenutti's representation that
5 he will do what he, as counsel, can do to make sure that --
6 recommend to his client that nothing untoward happens in the
7 meantime.

8 And your client, for the time being, has the
9 functional equivalent of set-off. I mean, it's one of these
10 weird things about the bankruptcy law. You have to get
11 permission to do something the law permits you to do. And
12 there are cases where people asserting rights of set-off have
13 substantial sums of money, and someone in bankruptcy has little
14 by comparison, and set-off as an offensive weapon. Here, it is
15 not an offensive weapon. Your client has acknowledged owing
16 this 390,000 dollars and wants to be vindicated for the off-
17 setting claim. But beyond that, it's the same deal.

18 So I hope you can reach a temporal resolution and,
19 with luck, a permanent one.

20 MR. BENVENUTTI: Your Honor, if I may --

21 THE COURT: Yes, sir.

22 MR. BENVENUTTI: -- one point of clarification. I'm
23 not clear whether the Court is telling us that we need to come
24 up with a stipulated order or an agreement. I strongly prefer
25 the latter for the reasons that the Court previously suggested.

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1 THE COURT: Well, but -- I mean, can't we kind of do
2 an order that makes the status quo? I mean look, Mr.
3 Benvenuti, if PG&E, or any party, agrees to do something by
4 order and then accidentally errs, there's no consequence. I
5 mean, there may be consequence, but certainly if your client --
6 there's a misunderstanding, it's not going to be a contempt-
7 type thing. I mean, I got to -- I think we have to fashion
8 a --

9 MR. BENVENUTTI: It's a big organization, Your Honor.

10 THE COURT: It is.

11 MR. BENVENUTTI: And I've discovered that
12 communication between its component parts is not always as
13 seamless as one would like.

14 THE COURT: I'm going to -- well, Mr. Benvenuti, I'm
15 going to ask you to use your good judgment and experience to
16 see if you can come up with a -- something that is acceptable
17 to both sides in terms of -- I mean, you have a lot of
18 experience with this in the bankruptcy court, in my court, and
19 if you can come up with language that opposing counsel will
20 agree with and feel comfortable with, then I'd like you to try
21 to do it. If not, I guess I'll do it.

22 MR. BENVENUTTI: All right. Very well, Your Honor.

23 THE COURT: Okay.

24 MR. BENVENUTTI: We'll certainly give it a shot. Does
25 the Court have in mind the middle of August, or the latter part

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1 of August?

2 THE COURT: Well, I mean, we've got our dates out
3 there. I mean, with this big organization, how long is it
4 going to take to kind of formalize putting this thing in place?

5 MR. BENVENUTTI: I don't think -- I don't think it
6 should take long, assuming we can reach agreement on what it
7 says with Ms. Duong and her client.

8 THE COURT: Well, I mean, we have a calendar in the
9 latter part of August, and as your client's and co-counsel
10 know, our mid-August calendar is getting a little crowded.

11 MR. BENVENUTTI: Yes. Yes.

12 THE COURT: Not to say the other ones aren't.

13 MR. BENVENUTTI: It's jammed. Yes, Your Honor.

14 THE COURT: What's our August date? The 28th?

15 MS. DUONG: We have the --

16 MR. BENVENUTTI: 28th would -- 28th would be fine with
17 me, if that works for Ms. Duong.

18 THE COURT: Oh, Ms. Parada, we have a --

19 THE CLERK: The 27th and the 28th --

20 THE COURT: Yeah, but do we have things on either of
21 those dates yet?

22 THE CLERK: On both.

23 THE COURT: Which are the kind of more like relief
24 from stay-type stuff? Is that the 27th? I mean, we don't --
25 and for example, we -- well, you tell me. What's on the 27th?

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1 THE CLERK: An application to retain Trident.

2 THE COURT: Okay. Ms. Duong, is that date convenient
3 for you? And again, I -- invitation to do it by phone.

4 MS. DUONG: Unfortunately, no, the 27th isn't. I have
5 a conflict.

6 THE COURT: How about the next day?

7 MS. DUONG: But the 28th would work.

8 MR. BENVENUTTI: All right.

9 THE COURT: Okay. Again, my invitation to you is
10 twofold. You're welcome here, but I'd rather save your client
11 some money and let you do this by phone. It's not going to
12 give Mr. Benvenutti an advantage.

13 And secondly, my other invitation is don't even come
14 back. Work a deal and convince your client that he should be
15 comfortable with something that is worked out at this level.
16 There is always a risk of something going wrong, but that's the
17 same kind of risk that exists everywhere, and I can't make this
18 entire organization act like two lawyers and one judge coming
19 to a resolution. It's like, it would be the same with
20 everything we're doing. Superior Court, out of court, out of
21 bankruptcy, it's the whole bundle.

22 So I'm continuing it to 9:30 on the 28th with the hope
23 that you'll have a resolution. Okay?

24 MR. BENVENUTTI: Very well. Thank you, Your Honor.

25 MS. DUONG: Thank you, Your Honor.

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1 THE COURT: Good luck. Thank you for coming, Ms.
2 Duong, and for your presentation.

3 All right. That's the only matter we have on the PG&E
4 calendar today. So anyone on the phone and anyone in court,
5 please -- anything else, that's it for PG&E today.

6 (Whereupon these proceedings were concluded at 10:09 AM)

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C E R T I F I C A T I O N

I, Jennifer Naus, certify that the foregoing transcript is a true and accurate record of the proceedings.



/s/ JENNIFER NAUS

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Date: August 1, 2019

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